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BAIL SLIP

The Appellant/Accused was directed to be released on Bail in and by the order of this Court dated 18.01.2001 made in Crl.Mp.No.346 of 2001 in Crl.Appeal No.58 of 2001 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-01-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

CRIMINAL APPEAL No. 58 of 2001

Ramalingam ... Appellant

-vs-

State rep by
The Inspector of Police
Vigilance and Anticorruption,
Nagapattinam.
(Cr.No.02/1997) ... Respondent

Criminal Appeal filed under section 374 Cr.Pc seeking to set aside the Judgment of conviction, made in C.C.No.11 of 1999, dated 21.12.2000, on the file of the Special Judge - cum - Chief Judicial Magistrate, Nagapattinam.

For appellant : Mr.AR.L.Sundaresan, Senior Counsel
For Mr.K.Azhagarasan

For respondent : Mr.Hasan Mohamed Jinnah
Govt. Advocate (crl. side)

J U D G M E N T

This appeal is directed against the conviction and sentence, dated 21.12.2000, imposed in C.C.No.11/99 on the file of the Special Judge - cum - Chief Judicial Magistrate, Nagapattinam.

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2. As per the prosecution case, on 26.08.1997, at about 3.00 p.m, at the office of Keezhaiyur Panchayat Union, Nagapattinam District, the appellant / accused, who had been the Extension Officer (Administration) – cum – Manager, Keezhaiyur Panchayat Union, demanded bribe of Rs.500/- from P.W.2, for issuing a cheque for Rs.2,550/- from the Panchayat Union, towards transport charges for distribution of eggs to various Noon-Meals and Nutrition Centres in the District. Pursuant to the same, subsequently, on 27.08.1997, at the marriage function of the relative of Keezhaiyur Panchayat Union Chairman, held at Nagapattinam, the demand was reduced to Rs.300/- , by the appellant / accused, at request of P.W.2. On 28.08.1997 at about 3.25 p.m, at the Office of the Keezhaiyur Panchayat Union, the accused received the sum of Rs.300/-, as illegal gratification from P.W.2 and thereby committed an offence punishable under Sections 7 and 13 (1) (d) read with 13 (2) of Prevention of Corruption Act, 1988.

3. In order to establish the case, the prosecution has examined P.W.1 to P.W.8 and marked Exs.P.1 to P.12, apart from marking the material objects M.O.1 to M.O.3.

4. The trial court after considering the oral and documentary evidence and the arguments advanced by both sides, has convicted the accused for the offence under Section 7 of the Prevention of Corruption Act and sentenced him to pay a fine of Rs.500/-, with default sentence and also convicted him for the offence under Section 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act and sentenced him to suffer Rigorous Imprisonment for one year and also to pay a fine of Rs.1000/-, with default sentence.

5. Mr.AR.L.Sundaresan, the learned Senior Counsel appearing for the appellant would contend that the appellant / accused was convicted under Sections 7 and 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act 1988, though the alleged guilt was not established by the prosecution beyond reasonable doubt. The learned senior counsel further contended that in order to convict the accused under the aforesaid sections, three vital aspects have to be established by the prosecution, namely, 1. Demand of illegal gratification, 2. Acceptance of the same and 3. Subsequent recovery of the amount from the accused. Here in the instant case, according to the learned Senior Counsel, all these three ingredients have not been established by the respondent before the trial court for convicting him under the aforesaid sections.

6. The learned Senior Counsel further contended that the appellant / accused was neither the authority to sign the cheque, nor the officer passing orders for the issuance of cheque. Therefore, the allegation against the appellant that he had demanded bribe is unsustainable in the absence of any other corroborative evidence. According to the learned senior counsel, there is no acceptable evidence to base the conviction on the appellant / accused.

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7. It is seen that Thiru.Shiv Dass Meena, District Collector, Nagapattinam, who accorded sanction to prosecute the appellant, a Government Servant was examined as P.W.1. The sanction order passed by P.W.1 on 27.07.1999, was marked as Ex.P.1. P.W.2 is the defacto complainant, who has deposed in his evidence that the complaint Ex.P.2 was written by his own handwriting, but in his cross examination, he has stated that he copied the same, which had been already written in a paper and that he wrote Ex.P.3 at the office of the Panchayat Union. The above reply is not convincing, as the same is self contradictory. Had it been written by him, he could have stated without the self contradictory version that for preparing the complaint, Ex.P.2, he had copied the same at the office of the Keezhaiyur Panchayat Union. Further, he has stated that on 28.08.1997, at about 12.00 Noon, he went to Manjakollai, Vigilance and Anticorruption Office and lodged the complaint, Ex.P.2. He has also deposed that he had written the complaint, as directed by some official. Further, in the cross examination, he has deposed that he wrote the complaint in a compelling circumstance and he did not admit the contents of the complaint Ex.P.2, except his signature available therein. Further, on the next day, police enquired and obtained his signature and he could not say how many signatures were affixed by him. As per the evidence of P.W.2, the complaint, Ex.P.2 was not voluntarily given by him, but under a compelling circumstance, he had given the complaint.

8. In this appeal, this Court has to decide whether the findings and the decision of the court below are based on evidence available in record. According to Mr.AR.L.Sundaresan, learned Senior Counsel, appearing for the appellant, there is no substantive evidence available on record to convict the appellant / accused. According to him, the entire prosecution case is mainly based on the complaint, Ex.P.2, given by P.W.2, the defacto complainant, but admittedly, he has not supported the prosecution case. As contended by the learned senior counsel, in a case under prevention of corruption act, the prosecution should establish 3 factors, 1. Demand of illegal gratification made by the delinquent official, 2. The receipt of such illegal gratification and 3. Subsequent recovery of the same from the accused.

9. In the instant case, in order to prove the alleged demand of illegal gratification by the appellant, P.W.2, the defacto complainant was examined, but he turned hostile and did not support the prosecution case. Therefore, as contended by the learned counsel for the appellant, the demand of illegal gratification made by the appellant / accused has not been established by the prosecution. Similarly, for the receipt of illegal gratification, the prime witness is P.W.2. According to him, the complaint, Ex.P.2 was preferred by him, by copying something written in a white sheet. While, he was cross-examined by the Government Advocate, he

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would state that on 28.08.1997 at about 12 Noon, he wrote Ex.P.2 as dictated by some official at the Office of the Vigilance and Anticorruption, Manjakollai. He has further stated that he did not see the appellant / accused at Nagapattinam, where the family marriage of Keezhaiyur Panchayat Union Chairman had been taken place on 28.08.1997, whish is contrary to the case of the prosecution. While, he was cross-examined on behalf of the accused, P.W.2 would say that he was compelled to write, as dictated by the officials and only affixed his signature. The complainant, P.W.2 did not admit the contents of the complaint, Ex.P.2 in his evidence.

10. As contended by the learned Senior Counsel appearing for the appellant / accused, the aforesaid evidence would go to the root of the case. I am of the considered view that the evidence of other witness cannot be construed as substantive evidence to establish the demand of illegal gratification and the receipt of the same by the appellant / accused from P.W.2. Even, when the recovery of the amount from the accused, the evidence of P.W.2 should play a vital role. Since the said witness turned hostile and did not support the prosecution case, it has to be construed that the recovery of the money from the appellant was also not established beyond reasonable doubt.

11. Therefore, on the facts and circumstances of the case, the trial court should have held that the alleged guilt against the appellant / accused under Sections 7 and 13 (1) (d) r/2 13 (2) of Prevention of Corruption Act, 1988 has not been proved beyond reasonable doubt and the finding of the court below is not based on evidence available on record. Therefore, to meet the ends of justice, I am of the considered view to allow this Criminal Appeal and to set aside the judgment of conviction and sentence, imposed on the appellant / accused.

12. In the result, the Criminal Appeal is allowed and the conviction and sentence, imposed on the appellant / accused is set aside. The fine amount, if any paid by the appellant / accused shall be refunded to him forthwith.

tsvn

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Special Judge - cum - Chief Judicial Magistrate
   Nagapattinam.

2. The Inspector of Police
   Vigilance and Anticorruption,
   Nagapattinam.

3. The Public Prosecutor, High Court of Madras, Chennai.

4.The District Collector,
  Nagapattinam.

+1 cc to M/s.A.L.Gandhimathi, Advocate Sr.No.306004.

AKR(CO)
dcp/7.6.07 Crl.A.No.58 of 2001

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